

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Tyco Fire Products LP,

Plaintiff,

v.

AIU Insurance Company, *et al.*

Defendants.

Case No. 2:23-cv-2384-RMG

**ORDER**

When ruling on Defendants initial motions to dismiss, the Court declined to abstain in this matter in favor of a pending Wisconsin state court litigation involving overlapping issues and parties, *Century Indemnity Company, et al. v. Tyco Fire Products LP, et al.*, Case No. 2022-cv-000283. (Dkt. No. 103 at 15-19). The Court reasoned that the timely adjudication of Tyco coverage issues was central to the potential resolution of thousands of cases pending against Tyco in the AFFF MDL and that declining to abstain would facilitate such a resolution. (*Id.*) The Court also denied Defendants motion to reconsider abstention citing a federal interest in retaining this case. (Dkt. No. 196 at 5-7).

Significant developments have occurred since the issuance of those orders. Namely, the Court has finally approved the Tyco Public Water System Settlement in the AFFF MDL. *In re Aqueous Film-Forming Foams Prods. Liability Lit.*, 2:18-mn-2873-RMG, 2024 WL 4868617, at \*1 (D.S.C. Nov. 22, 2024). Thus the potential negotiated resolution guiding the Court's decision declining to abstain has been reached and is no longer a basis to retain this matter. Additionally, the Court has abstained in other similar coverage actions involving AFFF MDL defendants because the exigent circumstances that were initially present in this case, that is the absence of a resolution of the major coverage issues between a defendant and its liability carriers potentially

impairing the negotiations between the defendant and the plaintiffs in the MDL, were not present in those cases. *See, e.g., Certain Underwriter's at Lloyd's v. BASF Corp.*, No. 2:24-cv-4325-RMG, 2024 WL 5198703, (D.S.C. Nov. 22, 2024); *see also National Foam, Inc. v. Zurich Am. Ins. Co.*, 2:24-cv-02877-RMG, 2024 WL 5170820, at \*3 (D.S.C. Dec. 19, 2024) (distinguishing the Tyco matter).

The Court is now considering revisiting its earlier decision declining to abstain in favor of the pending Wisconsin state court case. The Parties are directed to file a response to this order. The responses should address (1) whether the Court should continue retaining this matter, (2) whether any party would be prejudiced if the Court abstains from retaining this matter at this stage in the litigation, and (3) whether the Wisconsin action is sufficient to adjudicate the issues present here. The responses shall be no more than 15 pages and are due within 15 days of this Order.

In addition to those responses, the Parties are directed to file a joint statement, within 15 days of this Order, indicating which Defendants remain and what claims Tyco maintains against those Defendants.

s/ Richard Mark Gergel  
Richard Mark Gergel  
United States District Judge

January 2, 2025  
Charleston, South Carolina